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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,913	08/20/2001	Nghi Van Nguyen	05725.0848-00	4345
7590 11/19/2004				
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315		EXAMINER ELHILO, EISA B		
		ART UNIT PAPER NUMBER 1751		

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/931,913

Applicant(s)

NGUYEN ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-92 is/are pending in the application.
- 4a) Of the above claim(s) 46-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/13/2004 has been entered.

2 Claims 43-131 are withdrawn for the reasons set forth in the previous office action mailed on July 22, 2003.

### *Claim Rejections - 35 USC § 103*

3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9-20, 22-28 and 30-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US 5,872,111).

Au (US' 111) teaches a shampoo composition comprising sodium hydroxide as claimed in claims 1-4 (see col. 14, line 30), oxidizing agent of hydrogen peroxide in the amount of 0.03% to 3% which is overlapped with the claimed ranges as claimed in claims 9-12 (see col. 30, lines 5-16), clay materials such as aluminum silicates as cation exchange components as claimed in claims 13-15 (see col. 15, lines 5-7), zeolites and aluminosilicates as claimed in claims 16-18 (see col. 20, line 37), water as a solvent as claimed in claims 19-20 (see col. 14, line 44), complexing agent or sequestering agent that dissociate hydroxide compounds such as disodium

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ethylenediamine tetraacetate, citric acid, sodium basic silicates and tripotassium phosphate as claimed in claims 22-27 and 30-37 (see col. 14, lines 14-32) and amino acids as claimed in claim 28 (see col. 10, line 64), additives such as cationic surfactants as claimed in claim 39 (see col. 14, lines 20-21). Au also teaches a liquid personal product composition (shampoos for hair) as claimed in claims 40-41 (see col.3, lines 28-30 and col. 9, lines 1-2).

The instant claims differ from the reference by reciting a composition comprising at least one hydroxide compound and at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by combining the ingredients because the reference teaches compositions comprising all the claimed ingredients and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claim 38, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by incorporating more than one complexing agent because the reference teaches a number of complexing agents that may be used in the composition (see col. 14, lines 29-32), and, thus, a person of the ordinary skill in the art would have been motivated to select more than one complexing agent from those taught by the reference and, would expect such a composition to have similar properties to those claimed, absent, unexpected results.

With respect to claim 42, it would have been obvious to one having ordinary skill in the art at the time the invention was made to activate the composition by using heat because the

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reference teaches a composition that comprises all the claimed ingredients wherein the formation of the composition required heating (see col. 24, lines 56-61), and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

4 Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (5,872,111) in view of Pyles et al. (US 2001/0008630 A1).

The instant claim differs from the reference by reciting monosodium glutamate as specific species of an amino acid.

However, the primary reference of Au (US' 111) teaches a composition comprising amino acids as a genus (see col. 10, line 64).

Pyles (US'630) teaches in analogous art a hair treating composition comprising sodium glutamate as claimed in claim 29 (see page 4, paragraph 0091).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time of invention would have been motivated to select any of the species of the genus taught by reference, including those of the claims, because an ordinary artisan would have the reasonable expectation that any of the species of the genus would have similar properties and thus, the same use as the genus as a whole.

5 Claims 5-8 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Au et al. (US 5,872,111) in view of Wella AG[Wela] (DE 2014628).

Au et al. (US' 111) teaches a shampoo composition comprising sodium hydroxide (see col. 14, line 30), oxidizing agent of hydrogen peroxide (see col. 30, lines 5-16) and complexing agent or sequestering agent that dissociate hydroxide compounds (see col. 14, lines 14-32).

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Although Au et al, generally teaches a shampoo composition that comprises sodium hydroxide, oxidizing agent and complexing agent, Au et al, is silent about the percentage amount of sodium hydroxide in the composition.

Wella AG[Wela] (DE' 628) teaches in analogous art of hair straightening compositions, a composition comprising 2.0% of sodium hydroxide (see abstract and page 6, Example 4).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made to be motivated to modify the composition of Au et al., by optimizing the amounts of sodium hydroxide in order to get the maximum effective amount, and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

***Response to Applicant's Arguments***

6. Applicant's arguments filed 9,13,2004 have been fully considered but they are not persuasive.

With respect to the rejection based upon Au et al. (US' 111), Applicant argues that Au et al. does not teach or disclose a composition for lanthionizing keratin fibers wherein the at least one hydroxide compound and the at least one oxidizing agent are present in the composition in a sufficient quantity to effect lanthionization of keratinous fibers.

The examiner respectfully disagrees with the above argument because Au et al. (US' 111), teaches a bleaching agent in the amount of 0.01% to 7% (see col. 30, line 13-14) which cover the amounts of 1%, 3% and 6% as recited in Table 1, at page 20 and wherein the bleaching agent is added to the composition after the reaction of manufacturing of the glycosylamide surfactants is completed, which implies that the bleaching agent is part of the composition and is

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not used or involved in the process of manufacturing of the surfactants which is contrary to the applicant's assertion.

With respect to the argument based on Au in view of Pyles, the examiner would like to point out that Au et al. (US' 111), clearly suggests the use of the moisturizers of tallow fatty acids which are essential amino acid compounds in the composition (see col. 10, lines 62-65). Pyles (US' 630) in analogous art teaches a composition comprising amino acid of sodium Glutamate (see page 4, paragraph 0091) and therefore, the combination is proper and the prima facie case of obviousness has been established. Further, with respect to the argument that essential amino acids refers to specific category of amino acids excluding Glutamate, the examiner position is that the primary reference of Au (US' 111) suggests the use of amino acids as a genus in the composition (see col. 10, line 64) and Pyles (US' 630) as a secondary reference clearly teaches the claimed species of glutamate and therefore, there is a motivation to one having ordinary skill in the art to incorporate any amino acids including the glutamate compound as claimed in the composition of Au (US' 111) and would expect such a composition to have similar properties to those claimed in the absence of contrary.

With respect to the argument based on Au in view of Wella, the examiner disagrees with the applicant's argument for the reasons set forth in the previous office action. Accordingly, the claimed subject matter as a whole would have been obvious to one having ordinary skill in the art of keratin fibers lanthionizing formulations.

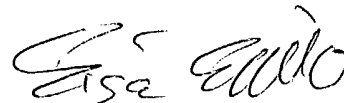
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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Patent Examiner  
Art Unit 1751

November 16, 2004